

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA,)
 4 vs.) Case No. 1:13CR47
 5 STANLEY SCOTT PORTER,) Greensboro, North Carolina
 6 Defendant.) December 1, 2014
 7) 4:09 p.m.

8 TRANSCRIPT OF STATUS CONFERENCE
 9 BEFORE THE HONORABLE WILLIAM L. OSTEEN, JR.
 10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Government: FRANK JOSEPH CHUT, AUSA
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Proceedings reported by stenotype reporter.
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P R O C E E D I N G S

(At 4:09 p.m., proceedings commenced.)

(Defendant present.)

MR. CHUT: Your Honor, this is United States of America versus Stanley Scott Porter, 1:13CR47. Mr. Porter is represented by Mr. Freedman and Mr. Blake, and this is on for a status conference, Your Honor.

THE COURT: All right. Good afternoon, Mr. Freedman.

MR. FREEDMAN: Good afternoon, Your Honor. I appreciate you giving us an opportunity to address the Court.

THE COURT: So we had a motion to extend the reporting date. I denied that motion and wrote a little more than I usually do on that. I had said that, to the extent necessary, I'd hear from the parties on the status conference; and that request was made, so I'll hear from you at this time.

MR. FREEDMAN: Your Honor, I would just ask the Court -- and the Court has been very generous when it comes to Mr. Porter, there's no question about that, but I would ask the Court to reconsider allowing him to stay out for a number of reasons.

First and foremost, Your Honor, is he was first on board for cooperation. I know the Court's aware of the history. He was first on board. He started cooperating -- prior to the information, we came in and pled. He has done everything the US Attorney's Office has asked him to do. He's

1 testified in front of the grand jury, I believe, at least twice
2 and has been on standby to do so more. He led to an initial
3 indictment that has brought -- the indictment came about after
4 the Court sentenced him, and his continued cooperation brought
5 an indictment that led to two different pleas, an individual
6 plea and a corporate plea, and has led to a superseding
7 indictment. In fact, we went through -- Mr. Blake and
8 Mr. Porter went through the superseding indictment and asked
9 him to sort of outline the different areas he believed he
10 provided information for the superseding indictment for the
11 case to be tried in May, and his cooperation throughout has
12 been very extensive.

13 We understand the Government's policy about not doing
14 like a pay it forward, issuing a Rule 35 motion that would
15 constitute what they would believe would be all the cooperation
16 at this point, but the problem is is that -- and he already
17 would be entitled to some reduction is my understanding for the
18 plea for Ms. Farrell and for ILMC coming in at this point, but
19 the Government is not in a position to go to the Court yet
20 because he may know he's going to come in and testify, if the
21 trial goes in May, in May and if the trial goes beyond that at
22 that point. We want him to be able to receive the full benefit
23 of his cooperation. This is -- this is extremely extensive
24 cooperation on his part, and it's continuing and is resulting
25 in --

1 THE COURT: I don't doubt that. But number one, just
2 to be clear, I'm no longer enamored of this idea of delaying
3 the reporting date. What I didn't anticipate would come to
4 pass has come to pass, and that is it's taking forever to get
5 the case completed. We're now a year out, and I don't do that
6 for a defendant. I mean, you know as well as I do that in this
7 district you may be fully entitled to a Rule 35 motion, but
8 rarely will a judge delay sentencing just to let the Government
9 finish, and here it's just -- there's no end in sight at this
10 point.

11 MR. FREEDMAN: Your Honor, this is -- I mean, in the
12 years I've been practicing in the Middle District, I agree with
13 you this is the first time the Court has done that. I mean, I
14 believe it's appropriate in this case only because of his
15 length of sentence, and that's where I was going to go to. The
16 concern is -- I mean, I don't think it's out of the realm of
17 possibility that we could argue that Mr. Porter would be
18 entitled to a probationary sentence at the end of everything;
19 and if he goes ahead and reports now and the case doesn't get
20 reached until May at the earliest -- and who knows what may
21 happen in May. I mean, one of the defense lawyers in the case
22 is Kearns Davis, and you know that Mr. Davis and I anticipate
23 trying a case before Your Honor in March, and I don't know how
24 that might affect trial in May. Even if he were entitled to
25 the 50 percent reduction, he would already not receive the full

1 benefit of what his full cooperation is, and it's through no
2 fault of his -- and, again, we're very appreciative for the
3 Court delaying the sentencing date to start with, but it's
4 through no fault of his that that occurs.

5 The other anomaly I thought about, Your Honor, is one
6 of the people he cooperated against, I believe, pled to a
7 misdemeanor charge and received probation. It could be
8 quite -- I don't know what's going to happen with the other
9 three defendants in the case, but it could be that something
10 gets worked out or whatever where they receive probationary
11 sentences, too, and then it would be extremely unfair to
12 Mr. Porter if he were the one that came in and provided that
13 information not only under Rule 35 but through 3553(a) when he
14 has to be compared to, you know, other defendants if all of a
15 sudden they were to receive probation. I don't know that
16 that's a possibility or not. But, I mean, based on what I've
17 seen so far --

18 THE COURT: Given the procedural history, I'm in a
19 difficult position in terms of getting to probation unless the
20 Government makes a pretty substantial recommendation. I mean,
21 I'm not saying you can't do it, but to reject the Government's
22 recommendation -- you're familiar with at least the way in this
23 district we've interpreted the circumstances where you reject
24 the Government's recommendation and say the defendant is
25 entitled to more than the Government has recommended. So at

1 this point in assessing this possibility, I can't say it's
2 substantial, not that it's not there, it's always a
3 possibility, and the Government might recommend, you know, a
4 reduction that would take you to four months, and then I can
5 decide whether four months is really worth it kind of thing.

6 But I really don't hear the Government -- and,
7 Mr. Chut, you can correct me if I'm wrong. We're 20 percent
8 off where we were originally. If he gets the full 50 percent,
9 which is more or less the norm, that's not going to cut
10 Mr. Porter to a probationary sentence. So it will take a
11 substantial recommendation at this point to get to a
12 probationary sentence.

13 Mr. Chut, I don't want to speak for the Government
14 here, but just to be clearly fair and honest with everyone. I
15 understand the concern about getting Mr. Porter to the point
16 where he can receive full benefit of his cooperation, but I
17 don't hear the Government representing that we're going to come
18 in here and recommend a noncustodial sentence as part of his
19 cooperation.

20 So that having been said, I'm -- I've extended this
21 out a long ways. I've gone well past what ordinarily would
22 happen, and I'm running out of reasons to continue delaying it
23 under those circumstances. Mr. Chut?

24 MR. CHUT: And, Your Honor, it wasn't -- and I'm
25 authorized to say this. Of course, these are -- Rule 35

1 motions are certainly the inner workings of the US Attorney's
2 Office, but it was my intention to file a Rule 35 motion not --
3 for some reduction prior -- at the deadline the Court set.
4 That was not approved by Mr. Barrett, and Mr. Barrett
5 authorized me to say that. So we did not file for a Rule 35 to
6 reflect his further cooperation because basically it's our
7 policy to file one at the end of cooperation.

8 Your Honor, I do not -- while I don't foresee -- I
9 foresee, Your Honor, if this plays out the way I think it will
10 play out, the United States recommending a substantial
11 reduction for Mr. Porter, and it does raise a concern that even
12 without a probationary request, it might put him in a position
13 where he doesn't get full credit for his cooperation. Anything
14 is possible, I guess, Your Honor. I guess at some point it
15 could be approved probation. I don't foresee that, but I guess
16 that's possible, Your Honor. Normally, that would be out of
17 the norm of our office's policies. That's not to suggest that
18 Mr. Porter's cooperation isn't both important and substantial,
19 and I feel a little handicapped that I don't have a file that
20 reflects that, but that is the situation.

21 I do -- even if he gets a 50 percent kind of standard
22 reduction for testifying, if he goes in now, Your Honor -- and
23 the United States would be ready for trial in May, Your Honor.
24 That's a real date for the United States obviously, and we will
25 be ready. He's bumping against that having already served --

1 I'm worried at that point, Your Honor, there is some risk that
2 he would not get full credit. So there is that possibility.

3 I can't tell the Court to a certainty that we're
4 going to recommend probation because that's not normally our
5 policy. Of course, anything is possible, Your Honor. Who
6 knows? You know, Judge Tilley has said trials are fluid
7 things, and things could happen that I don't foresee, but
8 that's kind of, I guess, an awkward of saying where the
9 Government is at this point, Your Honor.

10 THE COURT: So your best guess at this point is the
11 Government will move at some point for further reduction once
12 it's completed, that that further reduction will not be a
13 recommended probationary sentence from the Government --

14 MR. CHUT: Most likely not, Your Honor.

15 THE COURT: -- but you don't know what at this point
16 it will be.

17 MR. CHUT: Your Honor, if all the defendants came in
18 and pled guilty right now, Mr. Porter would get a Rule 35
19 motion from the Government. If it was approved, speaking to
20 the fact that I don't have -- I'm not speaking with authority,
21 Your Honor. I'm only speaking -- doing a projection and what I
22 would recommend. He would more credit for the guilty pleas
23 that have taken place in the interim plus credit for any pleas
24 obtained in the case. If the case goes to trial, he'll receive
25 a reduction for testifying plus some amount of recommended

1 reduction for the fact that in the original cases there were
2 guilty pleas in part based on his cooperation.

3 THE COURT: And his original guideline calculation,
4 where was he? I went 20 percent down to 12 months plus -- he
5 was originally up in the 30s?

6 MR. FREEDMAN: I believe it was 27 to 33 initially,
7 Your Honor. Then when the Court fashioned a sentence, the
8 Court sentenced -- it wasn't reflected in the judgment, but in
9 the transcript the Court fashioned a sentence to a 24-month
10 sentence, 12 months active, 12 months house arrest, and you
11 were going to have the 12 months house arrest done first, but
12 that could not be done.

13 THE COURT: I think I did part of the -- basically
14 part of the -- a large part of the departure based on the
15 20 percent or 10 or whatever the percentage was and then some
16 of it from the way I structured the sentence.

17 MR. FREEDMAN: That's correct, Your Honor. And I've
18 talked to Mr. Chut, too, just about -- this is a very -- in
19 addition to our concern that -- you know, I believe he's going
20 to -- I don't know how far the Government will go. I believe
21 based on what the Court's heard, he's going to be entitled to a
22 very significant reduction. In addition, this is a very
23 complex case, and I've talked to Mr. Chut just about the
24 dynamics. They need easy and they've had easy and ready access
25 to Mr. Porter. If Mr. Porter were in a facility in southwest

1 Virginia, which is where eventually he will report --

2 THE COURT: I'll tell you, Mr. Freedman. They've had
3 him for more than a year. They can they can get what they need
4 out of Mr. Porter. That doesn't carry a lot of weight with me.

5 MR. FREEDMAN: You know, the other -- that plus --
6 again, I said even if we wait until May, Your Honor, I'm
7 concerned he will not receive the full benefit of what's going
8 on. If the case gets continued in May, we're in the exact same
9 posture.

10 THE COURT: And I'm -- I mean, I just can't -- I
11 won't -- there's no -- I mean, I tried to do it. I think there
12 is authority for me to do it, but 14 months later or whatever
13 the time frame is, here I am again in the same posture I was a
14 year ago. The sentence that would have worked was the original
15 one that I can't do as a matter of law. That would have given
16 me more flexibility, but it's gone.

17 MR. FREEDMAN: I guess our other concern, Your Honor,
18 just as a practical matter, if -- in addition of concern about
19 him not receiving the full benefit, I don't believe the
20 Government can exclude the possibility of a probationary
21 sentence recommendation depending upon what he could do, in
22 which case going in -- he definitely would not receive the full
23 benefit of that.

24 In addition, Your Honor -- and, again, I don't know
25 if it's really part of the Court's calculus, but at least in

1 terms of my calculus, he's going to be at a minimum security
2 facility. If he gets brought down here for trial, there's a
3 good possibility from what I've seen from past experience while
4 waiting for things, if the trial is four or five weeks, he
5 could be sitting in a county jail for four or five weeks. I
6 just went through this recently with a case.

7 I'm just -- and, again, the Court's been very fair.
8 I also understand I've not seen this situation before, so I
9 don't know -- I'm not suggesting anything other than --

10 THE COURT: I understand that.

11 MR. FREEDMAN: Mr. Porter has done everything asked
12 of him. We're not in this position because of anything that
13 Mr. Porter has done. In fact, we're in this position because
14 Mr. Porter's information has appeared to be so valuable that it
15 led not only to one investigation, but sort of a second
16 ancillary investigation that came about from the second
17 indictment. So, I mean, it's almost because he has so much
18 information, and he's been doing something along the way, he's
19 in a position where he cannot yet receive, you know, a Rule 35
20 prior to having to report. And I believe the only reason we're
21 in this position now -- and I understood the US Attorney's
22 policy of we don't want -- we don't do Rule 35s forward.

23 THE COURT: But nobody has come up with any better
24 way to do this other than just indefinitely postpone the
25 reporting dated, and that's not satisfactory anymore. It's

1 just dragged on for too long. There's no end in sight.

2 MR. FREEDMAN: Well, Your Honor, if indeed the --
3 well, I guess there is an end in sight in that we have a trial
4 set for May. Mr. Chut has said the Court is ready to go in
5 May.

6 THE COURT: We had trial set before, and then we had
7 a superseding indictment, and then we had a lengthy
8 continuance.

9 MR. FREEDMAN: And my understanding is there's no
10 plans for any more superseding indictments and that
11 Mr. Porter's cooperation will be full and complete after the
12 trial in May. And then, again, if indeed there were not a
13 trial in May, then Mr. Porter will end up receiving no benefit
14 from all the cooperation which he's done, which would not be an
15 incentive for people to provide everything they know for fear
16 that it takes too long for things to be complete.

17 THE COURT: You know, at its heart -- I hate to speak
18 so candidly in open court and on the record, but at its heart
19 is the philosophical issue of so Mr. Porter's done everything
20 he can possibly do to get his cooperation, the Government
21 doesn't want to move for substantial assistance at this point
22 in time and get him further reduction, so, Judge, if he
23 outserves his sentence, that's your fault, not ours. But at
24 the same time, I'm sitting here indefinitely extending a
25 reporting date trying to accommodate everything, and, I mean,

1 there comes a point in time where I'm just outside of what I
2 consider to be reasonable.

3 So we get to 2015, and we're 16 months out from the
4 original sentencing date. I don't know where I got that I had
5 kind of a year. I think I had extended some reporting dates
6 before to try to stagger sentences, and a year seemed to --
7 over the course of 8 to 12 months, it seemed to work all right
8 with the Bureau of Prisons, but now I'm getting into an area
9 that simply I'm finding unacceptable because there's just too
10 many unknowns. I'm not going to continue it out forever.

11 MR. FREEDMAN: And we're not asking you to do that,
12 Your Honor. And, again, I know the Court has your
13 responsibilities, and we would -- no one would ever say it's
14 the Court's fault if -- you know, if he did not receive the
15 full benefit. But on Mr. Porter's behalf, I can't control the
16 Court or the Government. All I can say is Mr. Porter has done
17 everything right. I believe Mr. Porter is going to be entitled
18 to a significant reduction if not all the way to probation,
19 then maybe very close; and if he reports now, and the case
20 isn't tried until May, I don't see any possibility for him
21 receiving that credit.

22 THE COURT: Well, under -- there is no specific rule
23 that guides me, but I've been -- yes, sir?

24 MR. FREEDMAN: I was just going to say, having
25 done -- and I agree this is unusual for the Middle District.

1 Having done cases in both the Western and Eastern District and
2 a number of other districts around the country, to have a
3 case -- to have a complex white collar case go on for several
4 years before everything's resolved I don't believe is that
5 abnormal.

6 THE COURT: No, I don't have any problem with the
7 years. But when the pieces start rolling in and then the other
8 parts drag on, you get these kinds of issues.

9 This is what I'm going to do. I'm going to get
10 Mr. Porter through Christmas to January the 15th. That's a
11 Thursday. January 15, 2015. As I see it, we've gotten --
12 we're 14 months out. We'll be 15 months out. It's just
13 complete speculation at this point. The Government won't
14 commit to anything, so it's speculation. It's a guess, an
15 educated guess, but it's right up there with speculation as to
16 whether he'll serve this sentence or not between then and May.

17 I'm going to extend him to the 15th to give him an
18 opportunity to get through the holidays and close his business
19 up. At that point, if the parties, the Government and the
20 defendant, particularly the Government, can't certify -- there
21 is a provision under the release and detention provisions
22 relating to release pending appeal where the parties can
23 certify that it is likely he will serve his sentence, if the
24 Government's prepared to make a representation to the Court
25 that he's likely -- taking into consideration what he's likely

1 to receive in terms of his substantial -- any reduction for
2 existing and future cooperation that he's likely to over-serve
3 that sentence, then I'll consider that further at that time.
4 But if the Government still doesn't know what's going to happen
5 and can't make any kind of representation that he's likely to
6 over-serve in their opinion, then I'm going to -- I'm not going
7 to just extend it again and wait and see until May.

8 So you all can talk about that. Do you understand
9 that, Mr. Chut? I can't lay my hands on the rule --

10 MR. CHUT: I do, Your Honor.

11 THE COURT: -- but there is a rule that would allow
12 me to allow somebody to remain out pending appeal if there's a
13 certification from somewhere or I find that he's likely to
14 over-serve his sentence if he has to report. So if you get to
15 the point by January 15 that the parties can submit something
16 concrete to me to suggest he may over serve his sentence, then
17 I'll consider that. But otherwise I'm not extending this
18 again.

19 MR. CHUT: Your Honor, may I inquire of -- and I'm
20 speaking from the position of a line AUSA without -- I don't
21 have the authority, Your Honor, to do the motion myself. I can
22 forecast to the Court what I think the motion would be, but
23 what would the Court like, concretely, so I can take that back,
24 Your Honor, to the criminal chief?

25 THE COURT: Something other than "We consent to the

1 defendant's motion."

2 MR. CHUT: Yes, Your Honor.

3 THE COURT: I think you've got to be willing to come
4 in and say at some point that you think, given the cooperation
5 that he's rendered, and you anticipate that if he reports on
6 the 15th, then he's going to over-serve his sentence. If you
7 get to that point and you are comfortable with that -- maybe
8 the US Attorney's office says, no, we're not making any
9 commitment to anything, in which case I'm left with just pure
10 speculation.

11 MR. CHUT: I do have not have the authority to file a
12 motion, Your Honor. I think I am safe to forecast, Your Honor,
13 that if Mr. Porter, and I have no doubt he will, testifies at
14 the trial that he will receive at the very least a 50 percent
15 5K, and considering he's also involved in --

16 THE COURT: 50 percent off of what, though?

17 MR. CHUT: 50 percent off, I guess, his current
18 sentence, Your Honor, would be the reduction.

19 THE COURT: I mean, a lot of times there's
20 20 percent, and then later there's 30 percent for a total of a
21 total of 50 off the original sentence. So whether it's 50 off
22 of where he stands now, that'd still put him in a 6-month
23 active sentence.

24 MR. CHUT: Let me, Your Honor, get guidance from my
25 chain of command so I'm not speaking improperly. I apologize

1 to the Court for the confusion. It's an unusual circumstance,
2 and I apologize, Your Honor.

3 THE COURT: What is that -- let me see. What is the
4 release, 3143?

5 MR. BLAKE: It may be 3141 or 3143.

6 THE COURT: 3143. This obviously doesn't apply here,
7 but I think this states what I'm trying to get to the bottom
8 of:

9 "The judicial officer shall order that a
10 person who has been found guilty of an offense and
11 sentenced to a term of imprisonment, and who has
12 filed an appeal [in this case, continuing to
13 cooperate] be detained, unless a judicial officer
14 finds that the appeal is not for the purpose of
15 delay raises a substantial question..."

16 None of that is applicable here because the parties
17 all seem to agree that he has continued to cooperate.

18 "...[that is] likely to result in a sentence
19 that does not include a term of imprisonment, or a
20 reduced sentence to a term of imprisonment less
21 than the total of the time already served plus the
22 expected duration of the appeal process."

23 The Government is uniquely in control of substantial
24 assistance and any reductions that are going to be recommended.
25 So if the Government can make that forecast, then I'll consider

1 it. But otherwise, if the Government remains uncertain as to
2 what the reduction may be and is not able to represent to this
3 Court what they anticipate in terms of any future reductions,
4 to me, not filing the motion sends the signal that the
5 reduction won't be enough to get him to probation at the end of
6 the day.

7 Mr. Porter, I know -- I apologized to you last time.
8 It's your life we're talking about, and I don't mean it to
9 sound like we're just juggling around government bureaucracy.
10 On the other hand, as Mr. Freedman alluded to, I've never done
11 this before. We've extended it out for a long time, and there
12 comes a point in time where if I do it for you, I'll be asked
13 to do it in every other case. So I apologize to you for the
14 way this may appear, but we're doing the best we can to get to
15 the bottom of it.

16 Mr. Chut, any questions about that?

17 MR. CHUT: No, Your Honor. Let me -- what I will
18 do --

19 THE COURT: I'm going to extend the time to the
20 15th of January for Mr. Porter to report. Absent some
21 exceptional circumstance over and above businesses, personal
22 issues, and that type of thing, I'm not going to extend it
23 again, and the only -- unless the Government comes in and says
24 we believe that, given everything, that he will have
25 over-served -- kind of outlined within the framework of that

1 statute I just referenced.

2 MR. CHUT: Yes, Your Honor.

3 THE COURT: If you get to that point and can tell me
4 that, then in that case I'll extend it further to try to avoid
5 that possibility. But just guessing they maybe will, maybe
6 won't, who knows, I mean, I can't -- and I think the Government
7 is well-intentioned to get this case tried in May, but they're
8 only half of the equation to the case, and things do pop up on
9 the other side, and you never know. All right.

10 MR. FREEDMAN: We appreciate that. On behalf of
11 Mr. Porter, Your Honor, he's been very understanding of the
12 process and very respectful of everything.

13 THE COURT: I appreciated that.

14 MR. FREEDMAN: He was ready to go on Wednesday, if
15 necessary; but he understands fully, Your Honor, and
16 appreciates everything that's been done.

17 THE COURT: I think January 15 will give everybody
18 plenty of time to decide whether or not that circumstance
19 exists. If it does, we'll address it in the form of a written
20 motion. If it doesn't, then I'm not going to tell you not to
21 file anything, but I've continued it as far as I can for normal
22 family and business circumstances.

23 MR. BLAKE: Your Honor, can I raise one procedural
24 question? Mr. Porter is scheduled to report in 36 hours. Does
25 the Court need to us submit a proposed order, or is that

1 something that can be issued by the Court?

2 THE COURT: We'll take care of that order by 9:00
3 tomorrow.

4 MR. BLAKE: Thank you, Your Honor.

5 MR. CHUT: Your Honor, what form would the Court
6 like a forecast of the --

7 THE COURT: A motion filed asking to extend the
8 reporting date and setting out fairly explicitly in here what
9 the Government believes will result and whether or not -- using
10 the language I described that he will fully serve his term of
11 imprisonment and some time we anticipate might be avoided if
12 the cooperation unfolds the way we think it will.

13 MR. CHUT: Yes, Your Honor. I'll file that under
14 seal, Your Honor.

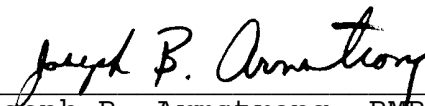
15 THE COURT: All right. If there's nothing further,
16 we'll stand adjourned.

17 (At 4:36 p.m., proceedings concluded.)

18 * * * * *

19 C E R T I F I C A T E

20 I certify that the foregoing is a correct transcript
21 from the proceedings in the above-entitled matter.

22
23 Date: 12?12?2014 
24 Joseph B. Armstrong, RMR, FCRR
25 United States Court Reporter
324 W. Market Street
Greensboro, NC 27401